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From:

Sent: Monday, November 17, 2008 3:06 PM

To:

Cc:

Subject: FW:

There has been some back and forth here in the National Office regarding the proper treatment of the VEBA. We have concluded the following: the VEBA can be treated as a 3401(d)(1) employer and subject to the employment tax liabilities associated with the distributions to the employees; the com-law employers are not liable for the employment taxes (see attached email from). If the VEBA filed timely employment tax returns for the year of distribution () the SOL for the 941s would be .

Finally, I've attached a detailed email from describing

Thanks, please feel free to call me if you have questions.

From:

Sent: Thursday, October 30, 2008 10:16 AM

To:

Cc:

Subject:

I noticed from the document that amounts placed in the VEBA and allocated to employees' accounts are not vested. See to employees explaining the . If you are aware of any other documents indicating that employees had vested benefits, please let me know.

I think that takes the employers off the hook. Rev. Rul. 67-351, 1967-2 C.B. 86, which concludes that certain contributions to an employees' trust are subject to employment taxes at the time of contribution. Under the facts of Rev. Rul. 67-351, pursuant to a collective bargaining agreement between a union and a group of employers, a vacation plan and trust were established for the benefit of the employees. The agreement provides that the employers will pay into the trust a specified amount for each hour worked by qualified employees. An individual account is established for each qualified employee by the trustees of the trust. The individual employee's interest in the amount in his vacation account is fully vested and nonforfeitable from the time the money is paid by his employer. The ruling concludes that the contributions to the trust are includible in gross income at the time they are contributed to the trust. Furthermore, the ruling holds that the contributions to the trust are payments of wages for purposes of the FICA, the FUTA, and Federal income tax withholding at the time they are contributed to the trust.

By contrast, [Revenue Ruling 57-316, C.B. 1957-2, 626](#), holds that contributions to a similar fund were not subject to employment taxes because the contributions therein were made by the employers and the employee benefits described in that ruling were not fully vested at the time the payments were made to the trust.

So my thinking is that we would not be able to go after the employers for any employment tax liability. I agree with you all that the VEBA was liable.

From:

Sent: Wednesday, November 05, 2008 10:32 AM

To:

Cc:

Subject: 3401(d)(1) employer/Health and welfare issues

Dear

We have done some follow-up research for the _____ case and, based on the PLR discussed in our meeting with _____, we agree that the VEBA could pay the employment taxes, based on your conclusion that the VEBA is the section 3401(d)(1) employer. We say this, of course, knowing that the issue appears moot _____.

In addition, we spoke with _____ regarding any potential Health and Welfare issues. _____

_____ Because this is not a cafeteria plan, the election raises a constructive receipt issue. (_____ informs us that this set-up cannot be a cafeteria plan because the employees do not have to use up the benefits by the end of the plan year; there may be other issues as well). Unfortunately, without further information on the available elections/"redirection" and plan documents _____), _____ will not be able to provide us a memo on this case.

[REDACTED]

[REDACTED]

Thanks